

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

HAMAN, INC. d/b/a KNIGHTS INN,	)
	)
Plaintiff,	)
	)
	) Civil Action File No.
	) <u>2:18-CV-01534-KOB</u>
	)
v.	) <b>OPPOSED</b>
	)
CHUBB CUSTOM INSURANCE	)
COMPANY,	)
	)
Defendant.	)

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**MOTION OF CHUBB CUSTOM INSURANCE COMPANY TO EXCLUDE  
THE EXPERT OPINION TESTIMONY OF CHUCK HOWARTH**

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*Attorneys for Chubb Custom Insurance Company*

Defendant Chubb Custom Insurance Company (“Chubb”), pursuant to Federal Rules of Evidence 402, 403, 702 and *Daubert*,<sup>1</sup> and Federal Rule of Civil Procedure 26, respectfully files this motion to exclude the expert opinion testimony of Chuck Howarth (“Howarth”), as follows:

## **GROUNDS FOR MOTION TO EXCLUDE HOWARTH**

This action involves an insurance coverage dispute regarding claims for alleged wind and fire damage to hotel buildings owned by plaintiff Haman, Inc., d/b/a Knights Inn (“Haman”). Haman designated an alleged expert, Howarth, to provide expert opinion testimony at trial regarding the alleged causes of the losses, the damages sustained, Chubb’s conduct during the claim investigation and appraisal process, and the meaning of the Chubb insurance policy provisions. Howarth also proposes to testify regarding the alleged replacement cost (RCV) and the actual cash value (ACV) of the damaged property.

The evidence of record attached to this motion and discussed in Chubb’s memorandum of law in support of this motion shows that Howarth is a public adjuster and damages appraiser, not a meteorologist, engineer or industrial hygienist. His area of expertise (if any) lies in determining the cost to repair or replace property that qualified experts have determined was damaged by a covered cause of loss. Howarth is not qualified by education, training or experience to provide expert

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<sup>1</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993).

opinion testimony under Federal Rule of Evidence 702 and *Daubert*<sup>2</sup> regarding whether winds from a tornado that passed to the southwest of Haman's property in 2014 were strong enough at the property to cause damage to the roofs of the three hotel buildings, and allegedly did cause such damage, and whether a fire in 2014 in one of Haman's buildings caused damage to all 80 rooms in that building by emitting smoke that allegedly traveled through the entire HVAC system and allegedly deposited soot in the hidden spaces in the walls, floors and ceilings. Howarth's opinions regarding causation are inadmissible under Rule 702 and *Daubert* for the additional reasons that they are not based upon sufficient facts or a reliable methodology.

Howarth's opinions regarding causation are inadmissible under Fed. R. Civ. P. 26(a)(2)(B) because he did not prepare a narrative report setting forth his opinions on causation and the bases for those opinions.

Howarth's opinions regarding Chubb's conduct in adjusting the Haman's claims are inadmissible under Rule 702 and *Daubert*, and because Howarth is exclusively a representative of Haman. His business model is set up to maximize recovery for an insured. He does not possess the scientific objectivity required of an expert under Rule 702 and *Daubert*.

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<sup>2</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993).

Howarth's opinions regarding the alleged RCV of the damaged property are inadmissible under Rules 402 and 402 for lack of relevance (under the Chubb policy of insurance, Haman is entitled to recover only the ACV of the damaged property). Howarth's opinions regarding the alleged ACV of the damaged property are inadmissible because Howarth did not provide those amounts in his Rule 26 expert report.

In support of this motion, Chubb relies upon the following:

- (1) Haman's Designation of Expert Witnesses and accompanying exhibits, attached as Exhibit 1 to this motion;
- (2) The transcript of the deposition of Howarth and accompanying exhibits, attached as Exhibit 2 to this motion;
- (3) Haman's Amended Expert Disclosures, attached as Exhibit 3 to this motion;
- (4) Page from the Alabama Secretary of State webpage for Haman, Inc., attached as Exhibit 4 to this motion;
- (5) Certified copy of the Chubb Policy's Building and Personal Property Coverage Form, attached as Exhibit 4 to this motion; and
- (6) Chubb's memorandum of law in support of its motion to exclude Howarth's opinion testimony filed contemporaneously with this motion.

WHEREFORE, for the reasons discussed in this motion and the accompanying memorandum of law, Chubb Custom Insurance Company requests that the Court enter an order precluding Howarth from testifying to any of the matters addressed in Haman's expert disclosures, including the alleged causes of the losses claimed by Haman, the meaning of the Chubb policy's provisions, whether Chubb complied with the policy provisions and other legal obligations of an insurer when investigating a first-party property claim, any criticisms of Chubb's claim handling conduct and its conduct during the appraisal process, and the alleged replacement cost (RCV) and actual cash value (ACV) of the damages to Haman's property.

**STATEMENT REGARDING CONSULTATION WITH OPPOSING COUNSEL**

In accordance with this Court's Scheduling Order [Doc 18], counsel for Chubb, before filing this motion, conferred with plaintiff's counsel in good faith with respect to the relief requested in this motion. Specifically, on August 20, 2020, Chubb's counsel sent an email to plaintiff's lead counsel, Gary Conchin, with copies to Kenneth B. Cole, Jr., Franklin Taylor Rouse, Gregory A. Brockwell, and Jason R. Smith, advising them that Chubb intends to file this motion to exclude the opinion testimony of Chuck Howarth under *Daubert*, and inquiring whether plaintiff opposes this motion. In response, Mr. Conchin stated plaintiff opposes the motion.

This 20th day of August, 2020.

*/s/ Wayne D. Taylor*

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the **MOTION OF CHUBB CUSTOM INSURANCE COMPANY TO EXCLUDE THE EXPERT OPINION TESTIMONY OF CHUCK HOWARTH** was electronically mailed to the following counsel of record:

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This 20th day of August, 2020.

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